

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ARMANI E. THOMPSON,  
Plaintiff,  
No. C-13-4782 EMC (pr)

ALAMEDA COUNTY SHERIFF'S  
DEPT.; *et al.*,  
Defendants.

## **ORDER OF DISMISSAL WITH LEAVE TO AMEND**

16 Armani E. Thompson, an inmate at the Santa Rita Jail, filed this *pro se* civil rights action  
17 under 42 U.S.C. § 1983, claiming he was subjected to excessive force at the jail. Pursuant to 28  
18 U.S.C. § 1915A, the Court reviewed the complaint, found that it stated a claim against one defendant  
19 (i.e., deputy Oliveira) for the use of excessive force, and dismissed it with leave to amend as to the  
20 other defendants because Mr. Thompson had not linked them to his claims. Mr. Thompson did not  
21 file an amended complaint, and the deadline by which to do so has long passed. Accordingly, the  
22 Court will dismiss all other defendants and claims from this action and will have the complaint  
23 served on deputy Oliveira.

24 For the reasons stated above and in the order of dismissal with leave to amend.

25       1. The complaint states a cognizable § 1983 claim against Alameda County Sheriff's  
26 Deputy G. Oliveira for the use of excessive force on Mr. Thompson. All other defendants and  
27 claims are dismissed from this action.

1       2. The clerk shall issue a summons and the United States Marshal shall serve, without  
2 prepayment of fees, the summons, a copy of the second amended complaint and a copy of all the  
3 documents in the case file upon Alameda County Sheriff's Deputy G. Oliveira, badge # 2068.

4       3. In order to expedite the resolution of this case, the following briefing schedule for  
5 dispositive motions is set:

6           a. No later than **November 7, 2014**, Defendant must file and serve a motion for  
7 summary judgment or other dispositive motion. If Defendant is of the opinion that this case cannot  
8 be resolved by summary judgment, Defendant must so inform the Court prior to the date the motion  
9 is due. If Defendant files a motion for summary judgment, Defendant must provide to Plaintiff a  
10 new *Rand* notice regarding summary judgment procedures at the time he files such a motion.

11 *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012).

12           b. Plaintiff's opposition to the summary judgment or other dispositive motion  
13 must be filed with the Court and served upon Defendants no later than **December 5, 2014**. Plaintiff  
14 must bear in mind the notice and warnings regarding summary judgment provided later in this order  
15 as he prepares his opposition to any motion for summary judgment.

16           c. If Defendant wishes to file a reply brief, the reply brief must be filed and  
17 served no later than **December 19, 2014**.

18       4. Plaintiff is provided the following notices and warnings about the procedures for  
19 motions for summary judgment:

20           The defendants may make a motion for summary judgment by which  
21 they seek to have your case dismissed. A motion for summary  
22 judgment under Rule 56 of the Federal Rules of Civil Procedure will,  
23 if granted, end your case. . . . Rule 56 tells you what you must do in  
24 order to oppose a motion for summary judgment. Generally, summary  
25 judgment must be granted when there is no genuine issue of material  
26 fact -- that is, if there is no real dispute about any fact that would  
27 affect the result of your case, the party who asked for summary  
28 judgment is entitled to judgment as a matter of law, which will end  
your case. When a party you are suing makes a motion for summary  
judgment that is properly supported by declarations (or other sworn  
testimony), you cannot simply rely on what your complaint says.  
Instead, you must set out specific facts in declarations, depositions,  
answers to interrogatories, or authenticated documents, as provided in  
Rule 56(e), that contradict the facts shown in the defendants'  
declarations and documents and show that there is a genuine issue of  
material fact for trial. If you do not submit your own evidence in

1 opposition, summary judgment, if appropriate, may be entered against  
2 you. If summary judgment is granted, your case will be dismissed and  
3 there will be no trial. *Rand v. Rowland*, 154 F.3d 952, 962-63 (9th  
Cir. 1998).

4 If a defendant files a motion for summary judgment for failure to exhaust administrative remedies,  
5 he is seeking to have the case dismissed. As with other defense summary judgment motions, if a  
6 motion for summary judgment for failure to exhaust administrative remedies is granted, the  
7 plaintiff's case will be dismissed and there will be no trial.

8 5. All communications by Plaintiff with the Court must be served on a defendant's  
9 counsel by mailing a true copy of the document to the defendant's counsel. The Court may  
10 disregard any document which a party files but fails to send a copy of to his opponent. Until a  
11 defendant's counsel has been designated, Plaintiff may mail a true copy of the document directly to  
12 the defendant, but once a defendant is represented by counsel, all documents must be mailed to  
13 counsel rather than directly to that defendant.

14 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No  
15 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required  
16 before the parties may conduct discovery.

17 7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the  
18 Court informed of any change of address and must comply with the Court's orders in a timely  
19 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
20 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every  
21 pending case every time he is moved to a new facility.

22 8. Plaintiff is cautioned that he must include the case name and case number for this  
23 case on any document he submits to the Court for consideration in this case.

24 IT IS SO ORDERED.

25  
26 Dated: September 3, 2014

  
27 EDWARD M. CHEN  
28 United States District Judge